

Exhibit 3

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11 FEDERAL TRADE COMMISSION

12 UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

13 Federal Trade Commission,

14 Plaintiff,

v.

15 Grand Canyon Education, Inc., *et al.*,

16 Defendants.

No. CV-23-02711-PHX-DWL

**FTC’S RESPONSE TO DEFENDANT
MUELLER’S FIRST SET OF
REQUESTS FOR PRODUCTION TO
PLAINTIFF FEDERAL TRADE
COMMISSION**

18 Pursuant to Fed. R. Civ. P. 34, Plaintiff, the Federal Trade Commission

19 (“FTC”), by its undersigned attorneys, hereby makes the following objections and

20 provides the following responses to Defendant Mueller’s First Set of Requests for

21 Production of Documents. The FTC’s responses represent the FTC’s present

22 knowledge based on its investigation, information, and preparation to date; the FTC

23 reserves the right to supplement, revise, modify or otherwise change or amend its

24 responses and objections to the First Set of Requests.

1 The FTC responds to these requests in accordance with Federal Rules of Civil
2 Procedure 34, and objects to the Requests to the extent that they seek to impose
3 obligations beyond those authorized by the Rule, or duplicative production of
4 identical copies of documents. The FTC disregards instructions II, III, XI and XII
5 because they describe types of information that is not discoverable through a Rule 34
6 request for production. The FTC also disregards instruction VII and VIII insofar as
7 they are inconsistent with or are intended to displace the stipulated Order Regarding
8 ESI Protocol in this action (ECF No. 95).

10 Where the FTC responds that it will produce documents in response to a Request,
11 the FTC will conduct a reasonable search of files created or collected in connection with
12 the investigation that proceeded this Litigation that are likely to contain responsive
13 material, and produce documents identified through such search if the documents are not
14 privileged or protected by the work product doctrine, and not subject to other objection
15 regarding the scope of discovery. Fed. R. Civ. P. 26(b). A response that the FTC will
16 produce documents does not indicate that the FTC will search for or produce documents
17 not in the possession, custody, or control of the FTC and its present employees,
18 principals, officials, agents, attorneys, economists, and consultants either assigned to or
19 reviewing this Litigation. The FTC will produce documents as they are kept in the
20 regular course of business and follow the specifications for production of Electronically
21 Stored Information (“ESI”) in the stipulation exchanged by the parties.

22 **OBJECTIONS TO DEFINITIONS**

23 The FTC objects to the breadth of the definition of “Plaintiff,” “you,” or “you”
24 that accompanies these First Set of Requests. Requests that incorporate this Definition
25 fail to describe the requested records with reasonable particularity, and are overly broad,
26 unduly burdensome, and disproportionate to the needs of the case to the extent that it

1 defines these terms to include any individuals not involved in the investigation of GCU
2 and GCE that gave rise to this Litigation, and are not assigned to or involved in the
3 investigation or Litigation. Furthermore, to the extent this definition encompasses pre-
4 decisional documents prepared for Commissioners by their professional staffs, by the
5 FTC's General Counsel, or by other FTC components in aid of the FTC's decision to
6 commence litigation, each of those documents would be subject to the attorney-client
7 privilege, the deliberative-process privilege, and the work product doctrine.

8 The FTC generally objects to these Requests insofar as they encompass public
9 records and documents already in Defendant Mueller's possession, custody, or control
10 including documents produced to the FTC prior to initiation of this suit, tax returns and
11 financial reports of GCU or GCE, documents available to the public on the docket of
12 suits identified in the Commission's initial disclosures, and filings with the Securities
13 and Exchange Commission. To the extent a request seeks documents in Defendants'
14 possession, custody, or control, the request is improper and disproportionate to the needs
15 of this case because Defendant Mueller has more convenient access to the records, and
16 production would be unduly burdensome and unnecessarily expensive. *See* Fed. R. Civ.
17 P. 26(b)(1), (b)(2)(C)(i).

18 The FTC objects to requests that include the term "Defendant," because the term
19 is defined to refer "singularly and collectively to Brian Mueller, Grand Canyon
20 University, and/or Grand Canyon Education." Because of this definition, requests that
21 use the term "Defendant" do not describe the records requested with reasonable
22 particularity and are ambiguous.

23 The FTC is disregarding the definition of the term "referenced," which is
24 described as being applicable to "any request seeking documents referenced in Plaintiff's
25 response to an interrogatory," (Definitions, L). The requests that are accompanied by
26 this definition to not state that they seek documents "referenced in Plaintiff's response to

1 an interrogatory.” The definition is either inapplicable to these requests, or does not
2 describe the requests to which it is applicable, or the records requested, with reasonable
3 particularity.

4 The FTC also objects to requests for production of “communications” as defined
5 in the accompanying Definitions, as the definition of “communications” that
6 accompanies Defendant Mueller’s First Set of Requests is not confined to documents
7 and tangible things within the scope of Federal Rule of Procedure 34 and fails to
8 describe the requested records with reasonable particularity.

9 The FTC will produce copies of nonprivileged documents, labelled in accordance
10 with the ESI Protocol in this action, in response to Requests 5, 11 and 14. The FTC is
11 producing copies of documents responsive to Request 14 contemporaneously with these
12 responses (FTCvGCE-FTC012682 – FTCvGCE-FTC012685). The FTC is producing
13 documents responsive to Requests 5 and 11 in conjunction with productions in response
14 to First Set of Requests by Defendant Grand Canyon Education, Inc. (“GCE”), that it
15 anticipates completing by December 20, 2024. The FTC will not produce documents
16 specifically in response to Defendant Mueller’s Requests 1-3, 6-10, 11, 12, or 13.
17 Records that the FTC has or will produce in response to the First Set of Requests by
18 Defendant GCE may be responsive to these requests, and the FTC has or will produce
19 copies of those documents to Defendant Mueller. The FTC will not make a duplicative
20 production of those documents in response to Defendant Mueller’s requests.

RESPONSES TO INDIVIDUAL REQUESTS FOR PRODUCTION

1. Documents relating to or referring to the Litigation or any of the facts and/or people mentioned in the Litigation.

Response to Request for Production 1:

The FTC objects that this Request fails to describe the requested records with reasonable particularity, as it encompasses “any of the facts and/or people mentioned in the Litigation,” without limitation, and defines “relating or referring to” to include “concerning, reflecting, referring to, describing, evidencing, proving, disproving, summarizing, containing, analyzing, explaining, mentioning, discussing, describing, supporting, or constituting.” Such all-encompassing requests for documents fail to provide the reasonable particularity required by Rule 34. *See Calleros v. Rural Metro of San Diego, Inc.*, 2018 WL 1744599, at *7 (S.D. Cal. Apr. 11, 2018); *Lopez v. Chertoff*, 2009 WL 1575214, at *2 (E.D. Cal. June 2, 2009).

Furthermore, the request is overbroad, unduly burdensome, and disproportionate to the needs of the case in that it demands the FTC search for and produce, without limitation, documents reflecting or referring to the Litigation and any of the facts or people, without regard to whether the document or the manner in which it relates or refers to the Litigation, facts, or people is relevant to the claims or defenses in this Litigation. *See* MANUAL FOR COMPLEX LITIGATION, 4TH § 11.443, at 75 (2004) (describing demands such as those for “all documents relating or referring to” an issue, party, or claim as indiscriminate, overly broad, and unduly burdensome). The Request encompasses documents that have no relevance to the claims or defenses in this action, and documents that relate or refer solely to uncontested facts. The burden of conducting a search to gather and produce documents relating to or referring to the Litigation, facts mentioned, and people mentioned is not justified by the value of such a search and production to resolving the issues in this Litigation.

1 The FTC also objects that this Request is duplicative of requests for documents to
2 which the FTC has responded by producing nonprivileged documents described with
3 reasonable particularity. Furthermore, the FTC objects insofar as this request
4 encompasses documents to which Defendant Mueller already has access because the
5 documents are in the possession, custody, or control of one or more of the Defendants, or
6 are public records. A request that the FTC search for and re-produce documents
7 accessible to Defendant Mueller through public records, access to Defendants' records, or
8 the FTC's response to document requests is duplicative, unduly burdensome, and
9 improper.

10 The FTC objects to this Request because it seeks documents protected by the
11 attorney-client privilege, the deliberative process privilege, the informant's privilege, the
12 law enforcement evidentiary or investigatory files privilege, and the work product
13 doctrine. Accordingly, the FTC will not produce documents containing internal FTC
14 communications (including communications between Commissioners and executives),
15 Communications with informants and other law enforcement agencies, documents related
16 to such communications, or memoranda and analyses prepared in anticipation of litigation,
17 or documents containing protected Communications with third parties.

18 The FTC is withholding documents based on these objections. In response to
19 other, particularized requests, the FTC has or will produce documents that are within the
20 sweep of this request, but will not produce any documents specifically based on this
21 Request.

2. Documents containing or referencing Your communications with any governmental agency between the dates January 1, 2018 and the present that relate to any Defendant in this lawsuit or to any facts alleged in the Litigation.

Response to Request for Production 2:

The FTC objects that this request is duplicative or significantly overlaps with Defendant GCE's Document Request No. 1, and the portion of GCE's Document Request No. 20 that names government agencies. The FTC responded to these requests on November 7, 2024, and it has or will produce communications with governmental agencies as set forth in the FTC's response to those requests. The FTC incorporates and repeats its objections to Defendant GCE's Document Requests 1 and 20, as they are also applicable to Defendant Mueller's request.

Accordingly, the FTC objects that this Request fails to describe the requested records with reasonable particularity, as it covers, without limitation, documents that relate to any Defendant and any facts alleged in the Litigation. The Request is overbroad, unduly burdensome and disproportionate to the needs of the case in that it purports to require the FTC to search for and produce documents containing or referencing any Defendant or facts alleged in the Litigation, without regard to whether the facts are contested, and without regard for whether the communication or the reference to the facts is relevant to the claims or defenses in this Litigation. The FTC makes information about its official actions, including the identity of the Defendants in this action and the complaints in this litigation, available to the public and in response to inquiries, and this request demands production of communications with government agencies without regard to whether the communication involved information the FTC generally provides to the public regarding litigation. The Request encompasses documents that inform agencies of the Complaint and Amended Complaint, and communications that have no relevance to resolving the claims or defenses in this action. The burden of conducting a search to

1 gather and produce such documents is not justified by the value of such a search and
2 production to resolving the issues in this Litigation. The FTC objects to this Request to
3 the extent it is not limited to this Litigation, and calls for production of documents not
4 obtained for purposes of this Litigation; such documents are not related to the claims or
5 defenses and request for production of such documents is unreasonably burdensome.

6 The FTC also objects to the extent that this Request encompasses public records or
7 documents in Defendant Mueller's possession, custody, or control, as GCE and GCU
8 already have access to such documents. Records from GCU's application to the
9 Department of Education regarding transfer of control and subsequent litigation, and the
10 Department of Education's inquiry into the GCU doctoral programs are accessible to
11 Defendant Mueller. A request that FTC search for and re-produce such documents is
12 unduly burdensome and improper.

13 The FTC also objects to this Request because it seeks documents protected by the
14 deliberative process privilege, the law enforcement evidentiary or investigatory files
15 privilege, and the work product doctrine. Accordingly, the FTC will not produce
16 documents containing internal FTC communications (including communications between
17 Commissioners and executives), Communications with other law enforcement agencies,
18 documents related to such communications, or memoranda and analyses prepared in
19 anticipation of litigation, or documents containing protected Communications with third
20 parties.

21 The FTC is withholding documents based on these objections; it will not produce
22 any documents based on this Request apart from those described in the FTC's response
23 to Defendant GCE's Document Request No. 1, and the portions of GCE's Document
24 Request No. 20 that identify government agencies.

1 **3. Documents you received, either directly or otherwise, from any governmental**
2 **agency between the dates of January 1, 2018 and the present that relate to any**
3 **Defendant in this lawsuit or to any facts alleged in the Litigation.**

4 **Response to Request for Production 3:**

5 The FTC objects that this request is duplicative or significantly overlaps with
6 Defendant Mueller's Request No. 2, Defendant GCE's Document Request No. 1, and the
7 portion of GCE's Document Request No. 20 that names government agencies. The FTC
8 responded to GCE's Document Requests on November 7, 2024, and it has or will produce
9 communications with governmental agencies as set forth in the FTC's response to those
10 requests. The FTC incorporates and repeats its objections to Defendant GCE's Document
11 Requests 1 and 20, as they are also applicable to Defendant Mueller's request.

12 Accordingly, the FTC objects that this Request fails to describe the requested
13 records with reasonable particularity, as it covers, without limitation, documents that relate
14 to any Defendant and any facts alleged in the Litigation. The Request is overbroad,
15 unduly burdensome and disproportionate to the needs of the case in that it purports to
16 require the FTC to search for and produce documents containing or referencing any facts
17 alleged in the Litigation, without regard to whether the facts are contested, and without
18 regard for whether the communication or the reference to the facts is relevant to facts that
19 are contested, or to claims or defenses in this Litigation. The burden of conducting a
20 search to gather and produce such documents is not justified by the value of such a search
21 and production to resolving the issues in this Litigation. The FTC objects to this Request
22 to the extent it is not limited to this Litigation, and calls for production of documents not
23 received in connection with this Litigation or the pre-complaint investigation; such
24 documents are not related to the claims or defenses and request for production of such
25 records is unreasonably burdensome.

1 The FTC also objects to the extent that this Request encompasses public records or
2 documents in Defendant Mueller's possession, custody, or control, as GCE and GCU
3 already have access to such documents. Records from GCU's application to the
4 Department of Education regarding transfer of control and subsequent litigation, and the
5 Department of Education's inquiry into the GCU doctoral programs are accessible to
6 Defendant Mueller. A request that FTC search for and re-produce such documents is
7 unduly burdensome and improper.

8 The FTC also objects to this Request because it seeks documents protected by the
9 deliberative process privilege, the law enforcement evidentiary or investigatory files
10 privilege, and the work product doctrine. Accordingly, the FTC will not produce
11 documents containing internal FTC communications (including communications between
12 Commissioners and executives), communications with other law enforcement agencies,
13 documents related to such communications, or memoranda and analyses prepared in
14 anticipation of litigation, or documents containing protected communications with third
15 parties.

16 The FTC is withholding documents based on these objections; it will not produce
17 any documents based on this Request apart from those described in the FTC's response
18 to Defendant GCE's Document Request No. 1, and the portions of GCE's Document
19 Request No. 20 that identify government agencies.

20

21 **4. Documents containing or referencing Your communications with any student**
22 **between the dates of January 1, 2018 and the present, including without limitation**
23 **the individuals identified on Attachment C of your Rule 26 Initial Disclosures.**

24 **Response to Request for Production 4:**

25 The FTC objects that this request is duplicative or significantly overlaps with
26 Defendant GCE's Document Requests Nos. 3, 4 and 5, to which the FTC responded on

1 November 7, 2024. The FTC has or will produce communications with students as set
2 forth in that response. The FTC incorporates and repeats its objections to Defendant
3 GCE's Document Requests Nos. 3, 4 and 5, as they are also applicable here to the extent
4 Defendant Mueller's unqualified request for documents containing or referencing
5 communications with "any student between the dates of January 1, 2018 and the present,"
6 describes documents responsive to Defendant GCE's Document Requests Nos. 3, 4 and 5.

7 The FTC objects to the request because it fails to describe the requested records
8 with reasonable particularity. The request fails to describe the requested records with
9 reasonable particularity because Defendant's expansive definition of communication
10 encompasses any conveying of thought or information, and it encompasses records
11 "referencing" such communications, without limitation to the context, substance or nature
12 of the reference.

13 The request for documents containing or referencing your communications with
14 any student is also overly broad and unduly burdensome as it is not limited to students or
15 communications relevant to the claims or defenses in this Litigation. Requiring the FTC
16 to search for and produce communications from any individual who enrolled in, or
17 considered enrolling in, a GCU educational program would require searching, reviewing
18 and producing documents that do not concern representations regarding characterization of
19 GCU as a nonprofit, doctoral programs, or do-not-call requests. The burden of fulling this
20 request not proportional to the needs of discovery in this action, or reasonably limited to
21 documents relevant to the claims and defenses.

22 The FTC also objects to this Request to the extent it covers documents available to
23 Defendant Mueller because they are in the Defendants' possession, custody, or control
24 including documents the FTC provided prior to initiation of this suit. To the extent this
25 Request seeks documents in Defendants' possession, custody, or control, the Request is
26

improper and unduly burdensome because Defendant Mueller has access to the documents without the FTC re-producing them.

The FTC objects to this Request because it seeks documents protected by the attorney-client privilege, the deliberative process privilege, the law enforcement evidentiary or investigatory files privilege, the informant's privilege, and the work product doctrine. The FTC objects to this Request because it seeks communications with, and documents that would identify individuals subject to the informant's privilege. Accordingly, the FTC will not produce documents that would identify informants, that contain internal FTC communications, notes, drafts, communications with informants and other law enforcement agencies, documents related to such communications, or memoranda and analyses prepared in anticipation of litigation, or documents containing protected communications.

The FTC is withholding documents based on these objections. The FTC refers Defendant Mueller to the FTC's November 7, 2024, response to Defendant GCE's Document Requests, which describes particular documents the FTC has or will produce in response to those requests. The FTC will not duplicate that production or additional documents in response to this request.

5. Documents containing or referencing Your communications with any plaintiff or putative class member (including their attorneys or agents) in the actions and proceedings involving Defendants identified on pages three and four of your initial disclosures (*Carr et al. v. Grand Canyon University*, USDC AZ, Docket No. 2:19-05214; *Young v. Grand Canyon University*, USDC N. Ga., Docket No. 1:19-01707; *Young v. Grand Canyon University*, 11th Cir., Docket No. 21-12564; *Fellows v. Grand Canyon Education Inc.*, USDC W. Pa., Docket No. 1:18-00314; *In Re Grand Canyon Education, Inc. Securities Litigation*, USDC DE, Docket No. 1:20-00639; *Ogdon v.*

1 *Grand Canyon University*, USDC AZ, Docket No. 2:22-00477; *Smith v. Grand Canyon*
 2 *Education, Inc.*, USDC AZ, Docket No. 2:24-01410; *U.S. ex rel. MacKillop v. Grand*
 3 *Canyon University*, USDC AZ, Docket No. 2:23-00467; *Walsh v. Grand Canyon*
 4 *Education, Inc.*, USDC DE, Docket No. 1:20-00801).

5 **Response to Request for Production 5:**

6 The FTC objects to the request for production of documents regarding putative
 7 class members because the request fails to describe the requested records with reasonable
 8 particularity, and FTC does not have access to information identifying putative class
 9 members. Furthermore, to request for documents regarding putative class members is
 10 unreasonably burdensome and disproportionate to the benefit of such materials to
 11 discovery in this action as requiring the FTC to obtain the identity of putative class
 12 members would be burdensome and require information uniquely accessible to
 13 Defendants.

14 The FTC objects that the request for documents “referencing Your
 15 Communication with any plaintiff or putative class member” in the listed actions,
 16 including their attorneys and agents does not identify documents with particularity and is
 17 overbroad and unduly burdensome. “Communication” is defined in the document
 18 requests in a manner that encompasses documents filed in the listed actions, and
 19 requesting that the FTC produce documents and information received from public filings
 20 made in these actions – including the complaints, briefs, and evidentiary submissions –
 21 is unduly burdensome and not proportional to the needs of discovery in this action. The
 22 dockets of the listed actions contain voluminous documents regarding Defendants’
 23 activities in marketing educational services. Requiring production of all documents the
 24 FTC has received from publicly available filings from these actions is unduly
 25 burdensome. Furthermore, the request demands production of communications without
 26 regard to whether the communication pertained to the claims or defenses in the

1 Amended Complaint. Furthermore, “communication” is defined in this Set of
2 Interrogatories to include the conveying of thought or information, and, thus, demands
3 identification of interactions without regard to whether substantive information is
4 conveyed, and communications that have no significance to the claims and defenses in
5 this action. The request demands production of documents “referencing” such
6 communications, without regard for the nature of the reference or whether the
7 documents relate to claims or defenses in this action. The documents that simply
8 reference material from the listed actions bear little or no relevance to contested facts in
9 this Litigation or the claims and defenses, and the burden of searching for and producing
10 such documents.

11 The FTC objects to this Request because it seeks documents protected by the
12 attorney-client privilege, the deliberative process privilege, and the work product
13 doctrine. Documents that could reveal deliberations and mental impressions of FTC
14 attorneys regard the listed actions and proceedings in anticipation of litigation are
15 protected work product. Accordingly, the FTC will not produce documents that contain
16 protected material, such as internal FTC communications, notes, drafts, documents
17 related to such communications, or memoranda and analyses prepared in anticipation of
18 litigation.

19 The FTC is withholding documents based on these foregoing objections. The FTC
20 construes this request narrowly as a request for direct verbal communications between the
21 FTC staff assigned to represent the FTC in this action and a plaintiff or putative class
22 member (including their attorneys or agents) in the listed actions and proceedings. The
23 FTC will produce documents containing communications with named plaintiffs
24 (including their representatives) in the listed actions and proceedings that are not
25 protected by the work product doctrine or privileged.

1 **6. Documents or communications supporting Your allegations in Paragraph 7 of**
2 **the FAC that Brian Mueller “acting alone or in concert with others, [] has**
3 **formulated, directed, controlled, had the authority to control, or participated in the .**
4 **. . acts and practices described in [the First Amended Complaint]”.**

5 **Response to Request for Production 6:**

6 The FTC objects that this Request fails to identify the requested documents with
7 reasonable particularity because it requests that the FTC provide a comprehensive
8 production of documents and communications that support the allegations in paragraph 7
9 of the First Amended Complaint, an allegation that, in turn, references acts and practices
10 of GCE and GCU that span more than a decade. Furthermore, the request fails to describe
11 the requested records with reasonable particularity because Defendant’s expansive
12 definition of communication encompasses any conveying of thought or information. The
13 FTC also objects to the request to produce “communications” as overbroad, burdensome,
14 and improper, as the definition of “communication” that accompanies these First Requests
15 is not confined to documents and tangible things within the scope of Federal Rule of
16 Procedure 34.

17 Furthermore, the request for documents or communications supporting the
18 control, participation, or other involvement by Defendant Mueller in the activities
19 encompassed by the entire complaint would require an excessively laborious and time-
20 consuming search and production of documents and communications regarding
21 transactions and events, many of which are uncontested. Defendant’s definition of
22 communication multiplies this burden, as it encompasses any conveying of thought or
23 information. The burden of producing such a comprehensive response would far
24 outweigh any benefit to the needs of this case, particularly given that Defendant
25 Mueller’s control of, and participation in, the activities of GCE and GCU is established
26 by his offices, and corporate records of GCE and GCU documenting his authority, role

1 and official statements. This request is also unduly burdensome because documents
2 supporting the allegations are public records and records within Defendant Mueller's
3 possession, custody, or control; the FTC objects that the request that it search for, and
4 produce or re-produce documents that are already available to Defendant Mueller would
5 impose a burden that is unreasonable and not proportional to the needs of the case.

6 The FTC further objects that the request that the FTC produce documents and
7 communications supporting the allegations in paragraph 7 of the First Amended
8 Complaint is premature, and requests documents protected by the work product doctrine,
9 deliberative process privilege, informant's privilege, and law enforcement privilege by
10 requesting facts and documents prepared in anticipation of litigation, and agency
11 investigation and evaluation of the activities of the Defendants. The Request is not
12 limited to documents that are primary or significant support for specific, contested facts,
13 and Defendants have yet to provide relevant discovery regarding Defendant Mueller's
14 actions.

15 The FTC is withholding documents based on these foregoing objections and will
16 not produce documents in response to this Request.

17
18 **7. Documents or communications supporting Your allegations in Paragraph 14**
19 **of the FAC that "Gazelle/GCU was organized by GCE and Defendant Mueller to**
20 **advance GCE's for-profit business and to advance Defendant Mueller's interests."**

21 **Response to Request for Production 7:**

22 The FTC objects that this Request fails to identify the requested documents with
23 reasonable particularity because it requests that the FTC provide a comprehensive
24 identification of documents and communications that support the allegations in
25 paragraph 14 of the First Amended Complaint, an allegation that, in turn, refers to multi-
26 year organizational activities that are discussed in voluminous documents, including

1 SEC filings, IRS applications, applications to the Department of Education, accreditation
2 proceedings, litigation by Grand Canyon University against the Department of
3 Education, and suits by investors against Grand Canyon Education, Inc. Furthermore,
4 the request fails to describe the requested records with reasonable particularity because
5 Defendant's expansive definition of communication encompasses any conveying of
6 thought or information. The FTC also objects to the request to produce
7 "communications" as overbroad, burdensome, and improper, as the definition of
8 "communication" that accompanies these First Requests is not confined to documents
9 and tangible things within the scope of Federal Rule of Procedure 34.

10 This request is also unduly burdensome. The request for documents or
11 communications supporting Paragraph 14 would require an excessively laborious and
12 time-consuming search and description of transactions and events, many of which are
13 uncontested. Defendant's definition of communication multiplies this burden, as it
14 encompasses any conveying of thought or information. The burden of producing such a
15 comprehensive response would far outweigh any benefit to the needs of this case,
16 particularly given the statements and presentations describing the benefits of the effort to
17 investors. This request is also unduly burdensome because documents supporting the
18 allegations are public records and records within Defendant Mueller's possession, custody,
19 or control; the FTC objects that the request that it search for, and produce or re-produce
20 documents that are already available to Defendant Mueller would impose a burden that is
21 unreasonable and not proportional to the needs of the case.

22 The FTC further objects that the request that the FTC produce documents and
23 communications supporting the allegations in paragraph 14 of the First Amended
24 Complaint is premature, and requests documents protected by the work product doctrine,
25 deliberative process privilege, informant's privilege, and law enforcement privilege by
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requesting facts and documents prepared in anticipation of litigation, and agency investigation and evaluation of the activities of the Defendants.

The FTC is withholding documents based on these foregoing objections and will not produce documents in response to this Request.

8. Documents or communications supporting Your allegations in Paragraph 17 of the FAC that “the fees GCE received from GCU are not subject to any limit and are not proportionate to GCU’s costs for providing services to GC[U].”

Response to Request for Production 8:

The allegation is supported by the Master Services Agreement between Gazelle University and Grand Canyon Education, Inc., Exhibit D (GCU-FTC-007180-7182); Notes to Consolidated Financial Statements of Grand Canyon University since 2018; Notes to Consolidated Financial Statements of Grand Canyon Education, Inc., since 2018; Plaintiff’s Statement of Material Facts in Support of its Motion for Summary Judgment in Grand Canyon University v. Cardona, No. 2:21-cv-00177, ¶ 58.c.

The FTC objects to producing the documents identified above as these documents are already in Defendants’ possession. The FTC objects that the burden of identifying or producing additional documents is not proportionate to the needs of this case because the fee arrangements appear in multiple documents accessible to Defendants. The FTC also objects to the request to produce “communications” as overbroad, burdensome, and improper, as the definition of “communication” that accompanies these First Requests is not confined to documents and tangible things within the scope of Federal Rule of Procedure 34. The FTC objects that documents prepared in the course of investigating and preparing for litigation of this matter are protected by the work product doctrine, the attorney-client privilege, and the deliberative process privilege.

1 The FTC is withholding documents based on these foregoing objections and will
2 not produce documents in response to this Request.

3
4 **9. Documents or communications supporting Your allegations in Paragraph 55**
5 **of the FAC that “Defendants train telemarketers for GCU doctoral degree marketing**
6 **campaigns with materials that describe the GCU doctoral programs as requiring**
7 **twenty courses, which include only three dissertation courses.”**

8 **Response to Request for Production 9:**

9 The FTC objects that this Request fails to identify the requested documents with
10 reasonable particularity because it requests that the FTC search for and produce, without
11 limitation, documents and communications that support the allegations in paragraph 55
12 of the First Amended Complaint. Paragraph 55 references training of scores of
13 telemarketers involved in marketing multiple degree programs described in catalogues,
14 enrollment agreements, websites, tuition calculators and charts that Defendants
15 repeatedly modified without altering representations that the GCU doctoral programs
16 required twenty courses, three of which are dissertation courses. The FTC also objects
17 to the request to produce “communications” as overbroad, burdensome, and improper, as
18 the definition of “communication” that accompanies these First Requests is not confined
19 to documents and tangible things within the scope of Federal Rule of Procedure 34.

20 Furthermore, the FTC objects that requesting such a compilation of every
21 document and communications supporting Paragraph 55 is unduly burdensome because
22 Defendants have previously identified and authenticated training presentations that
23 exemplify the practice described in Paragraph 55. *See, e.g.*, GCE-FTC-CID-003-
24 00006221, GCE-FTC-CID-003-00006146, GCE-FTC-CID-003-00006071. Identifying
25 every document or communication supporting the allegation that such training occurred
26 would require an excessively laborious and time-consuming search and description of

1 transactions and events, many of which are uncontested. The burden of producing such
 2 a comprehensive response would far outweigh any benefit to the needs of this case. .

3 The FTC objects to producing the documents identified above as these documents
 4 are already in Defendants' possession. The FTC objects that the burden of identifying or
 5 producing additional documents is not proportionate to the needs of this case. The FTC
 6 objects that documents prepared in the course of investigating and preparing for litigation
 7 of this matter are protected by the work product doctrine, the attorney-client privilege, and
 8 the deliberative process privilege.

9 The FTC further objects that the request that the FTC identify documents or
 10 communications that relate to or reference the allegations in paragraph 55 of the First
 11 Amended Complaint seeks information protected by the work product doctrine,
 12 deliberative process privilege, informant's privilege, and law enforcement privilege by
 13 requesting facts and documents prepared in anticipation of litigation, and agency
 14 investigation and evaluation of the activities of the Defendants.

15 The FTC is withholding documents based on these foregoing objections and will
 16 not produce documents in response to this Request.

17
 18 **10. Documents containing or referencing Your communications with any current**
 19 **or former employee of any Defendant, including employees of any third-party acting**
 20 **on behalf of any Defendant, related to the Litigation.**

21 **Response to Request for Production 10:**

22 The FTC objects to the request because it fails to describe the requested records
 23 with reasonable particularity. The request fails to describe the requested records with
 24 reasonable particularity because it encompasses records "referencing" such
 25 communications, without limitation to the context, substance, or nature of the reference,
 26

1 and because Defendant's expansive definition of communication encompasses any
2 conveying of thought or information.

3 The FTC objects to this Request as ambiguous and overbroad in requesting
4 documents containing or referencing communications with a present, with any current or
5 former employee, agent, contractor, or representative of any Defendant without limitation
6 or qualification. The request is not limited to communications of significance, or by
7 ordinary meaning of communications, or to communications relevant to the claims or
8 defenses in this Litigation. The FTC also objects to that this request is overbroad in
9 encompassing press releases, published pleadings or inquiries for, or communication of,
10 public information regarding any Defendant and/or the facts in this Litigation. Public FTC
11 announcements regarding this action are available to Defendants' current or former
12 employees and are encompassed by Defendant's definition of communications. Collecting
13 and producing such documents would not advance the resolution of the claims or defenses
14 in this Litigation, and the burden of producing such documents is not proportional to the
15 needs of the case. The request is also unduly burdensome because FTC's public
16 announcements and public information regarding this action are available to Defendants,
17 the burden of searching for and producing documents containing such information is
18 disproportionate to any benefit for discovery.

19 The FTC objects that this Request seeks information protected by the informant's
20 privilege. *In re Perez*, 749 F.3d 849, 856 (9th Cir. 2014). Communications with a current
21 or former employee, agent, contractor, or representative in anticipation of litigation or
22 preparation for trial regarding the conduct alleged in the Amended Complaint, and the
23 recollections and mental impressions of FTC staff regarding such Communications, are
24 protected by the work product doctrine. Documents, including internal FTC
25 communications (including communications between Commissioners and executives),
26 communications with other law enforcement agencies, documents related to such

communications, or documents containing protected communications with third parties, that reference such Communications are also protected by the work product doctrine, the attorney-client privilege, the deliberative process privilege, and the law enforcement evidentiary or investigatory files privilege. Any communications responsive to a narrower request for communications discussing activities described in the Commission's claims in this Litigation are protected by the aforementioned privileges or the work product doctrine.

The FTC is withholding documents based on these objections, and will not produce any documents specifically based on this Request.

11. Documents containing or referencing Your communications with any Student Consumer Group related to any Defendant and/or the facts in the Litigation.

Response to Request for Production 11:

The Commission objects to the request for production of "communications with any Student Consumer Group related to any Defendant" because it fails to describe the requested records with reasonable particularity, is ambiguous, and encompasses records that are not related to claims or issues in this Litigation. The request fails to describe the requested records with reasonable particularity because it encompasses records "referencing" such communications, without limitation to the context, substance, or nature of the reference, and because Defendant's expansive definition of communication encompasses any conveying of thought or information.

The FTC also objects to that this request is overbroad in encompassing press releases, published pleadings or inquiries for, or communication of, public information regarding any Defendant and/or the facts in this Litigation. Public Commission announcements regarding this action are available to Student Consumer Groups and are encompassed by Defendant's definition of communications. Collecting and producing

1 such documents would not advance the resolution of the claims or defenses in this
2 Litigation, and the burden of producing such documents is not proportional to the needs of
3 the case. The request is also unduly burdensome because FTC's public announcements
4 and public information regarding this action are available to Defendants, the burden of
5 searching for and producing documents containing such information is disproportionate to
6 any benefit for discovery.

7 The FTC objects to production of documents "referencing Your communications
8 with any Student Consumer Group related to any Defendant and/or the facts in the
9 Litigation" because the documents are protected by the attorney-client privilege, the
10 deliberative process privilege, and the law enforcement evidentiary or investigatory files
11 privilege, and the work product doctrine. Accordingly, the FTC will not produce
12 documents that contain protected material, such as internal FTC communications, notes,
13 drafts, documents related to such communications, or memoranda and analyses prepared
14 in anticipation of litigation.

15 The FTC is withholding documents based on these foregoing objections.

16 The FTC will produce documents that are not protected by the work product
17 doctrine or privileged containing communications with representatives of a Student
18 Consumer Group representing class members.

19
20 **12. Documents or communications reflecting any review, investigation, or action**
21 **by the FTC against an institution of higher education (other than GCU) related to**
22 **statements and/or disclosures of the time, courses, credits, or costs to pursue a**
23 **doctoral since January 1, 2018.**

24 **Response to Request for Production 12:**

25 The FTC objects that this Request fails to describe the requested records with
26 reasonable particularity; it covers documents or communications without limitation, and it

1 encompasses “any review, investigation or action by the FTC.” Furthermore, the
2 accompanying definitions define “related to” expansively to include “concerning,
3 reflecting, referring to, describing, evidencing, proving, disproving, summarizing,
4 containing, analyzing, explaining, mentioning, discussing, describing, supporting, or
5 constituting.” The FTC also objects to the request to produce “communications” as
6 overbroad, burdensome, and improper, as the definition of “communication” that
7 accompanies these First Requests is not confined to documents and tangible things within
8 the scope of Federal Rule of Procedure 34.

9 The FTC objects that the request is not within the scope of discovery or
10 proportional to the needs of the case because it demands material regarding institutions of
11 higher education other than GCU.

12 The FTC objects that information regarding investigations by the FTC and
13 documents obtained in the course of such investigations is protected by statute. If the FTC
14 was conducting a nonpublic review or investigation, or considering an action within the
15 scope of this request against an institution of higher education, the FTC Act requires that
16 relevant material be confidential, subject to exceptions that are not applicable here. 15
17 U.S.C. § 57b-2(b)-(c); 16 C.F.R. 4.10(d)-(e). Disclosure of documents or information that
18 would reveal a nonpublic FTC review, investigation, or potential action against an
19 institution of higher education is generally prohibited by the FTC Act, and the FTC does
20 not comment on the existence or absence of such investigations, reviews, or potential
21 actions that remain confidential.

22 The law enforcement privilege, work product doctrine, the attorney-client and
23 deliberative process privilege, would also be applicable if the FTC was conducting a
24 review or investigation, or considering an action within the scope of this request against an
25 institution of higher education.

1 The FTC is withholding documents based on these foregoing objections and will
2 not produce documents in response to this Request.

3
4 **13. Documents containing or referencing communications about the Investigation**
5 **or Lawsuit involving You and/or FTC Chairs and/or Commissioners.**

6 **Response to Request for Production 13:**

7 The FTC objects that this Request fails to describe the requested records with
8 reasonable particularity and is ambiguous in that it covers, without limitation, documents
9 containing or referencing communications about the Investigation or Lawsuit and which
10 “involv[e]” “You” (*i.e.*, “the [FTC] and any of its agents, representatives, employees,
11 attorneys, experts, consultants, independent contractors, and/or other person or entity
12 acting, and/or purporting to act on behalf of the FTC), Chairs, Commissioners without
13 regard to whether the document is relevant to the claims or defenses in this Litigation.
14 Accordingly, the request covers any document containing or referencing communications
15 about the Investigation or Lawsuit if any FTC personnel are parties to the communication.
16 The Request does not provide a reasonably specific description of the documents
17 requested and encompasses documents that have no relevance to the claims or defenses in
18 this action.

19 The FTC also objects that the request is unduly burdensome. The burden of
20 conducting a search to gather and produce “all documents containing or referencing
21 communications” about activities that began in May 2022, and without limitation to the
22 personnel involved in the communication, the substance of the communication, or whether
23 the communication concerns contested facts, or is relevant to a specified claim or defense,
24 is enormous because the request lacks reasonable limitations. The burden of searching for
25 and producing documents to satisfy such an unfocused request is not proportional to the
26

1 needs of this Litigation, and not justified by the value of such a search and production to
2 resolving the issues in this Litigation.

3 The FTC also objects to the extent that this Request covers documents containing
4 communications between the FTC and Defendants or Defendants' counsel as Defendant
5 Mueller already has access to such documents; a request that the FTC search for and re-
6 produce such documents is unduly burdensome. The FTC also objects to the extent that
7 this Request encompasses public records or documents in Defendant Mueller's possession,
8 custody, or control, as Defendant Mueller already has access to such documents; a request
9 that FTC search for and re-produce such documents is unduly burdensome. The FTC also
10 objects that the request is duplicative insofar as it encompasses documents that contain
11 FTC civil investigative demands and correspondence with businesses, consumers and
12 agencies that the FTC has produced or stated will be produced in response to Defendant
13 GCE's First Set of Document Requests.

14 The FTC objects to this Request because it seeks documents protected by the
15 attorney-client privilege, the deliberative process privilege, the informant's privilege, the
16 law enforcement evidentiary or investigatory files privilege, and the work product
17 doctrine. Accordingly, the FTC will not produce documents containing internal FTC
18 communications (including communications between Commissioners and executives),
19 communications with informants and other law enforcement agencies, documents related
20 to such communications, or memoranda and analyses prepared in anticipation of litigation,
21 or documents containing protected communications with third parties.

22 The FTC is withholding documents based on these foregoing objections and will
23 not produce documents in response to this Request. As noted previously, the FTC's
24 response to Defendant GCE's First Set of Document Requests describe documents
25 containing communications about the Investigation with third parties, including entities
26 to which the FTC addressed civil investigative demands, and consumers who reported

1 experiences with telemarketing calls by or on behalf of Grand Canyon University,
 2 nonprofit representations, or the Grand Canyon University doctoral programs. The FTC
 3 will not duplicate that production in response to this Request.

4
 5 **14. Documents or communications referencing the FTC’s consideration of any**
 6 **Defendant at any meeting under 16 C.F.R. § 4.15 or by written circulation, including**
 7 **but not limited to, agendas, meeting minutes, transcripts, recordings, and any**
 8 **documents or information considered at such meeting (or by written circulation).**

9 **Response to Request for Production No. 14:**

10 The FTC objects that this Request fails to describe the requested records with
 11 reasonable particularity, and is overbroad, unduly burdensome and disproportionate to the
 12 needs of the case in that it purports to require the FTC to search for and produce all
 13 documents or communications referencing the FTC’s consideration of any Defendant at
 14 any meeting under 16 C.F.R. § 4.15 or by written circulation, and documents or
 15 information considered at such meeting without regard to whether the document is
 16 relevant to the claims or defenses in this Litigation. The Request for documents
 17 “referencing” consideration of any Defendant lacks reasonable particularity. Furthermore,
 18 both the expansive request for documents “referencing” consideration and the unqualified
 19 request for any documents or information considered at such meeting (or by written
 20 circulation)” encompass documents that have no relevance to the claims or defenses in this
 21 action. Furthermore, the request fails to describe the requested records with reasonable
 22 particularity because Defendant’s expansive definition of communication encompasses
 23 any conveying of thought or information. The FTC also objects to the request to produce
 24 “communications” as overbroad, burdensome, and improper, as the definition of
 25 “communication” that accompanies these First Requests is not confined to documents and
 26 tangible things within the scope of Federal Rule of Procedure 34.

1 The FTC also objects that the request is unduly burdensome and not limited to
2 production of documents proportional to the needs of this case. Because of the definition
3 of communications, the unqualified term “referencing”, and the request for any documents
4 considered at a meeting or circulation without limitation to the topic, the request
5 encompasses documents that have no substantive relevance to the claims and defenses,
6 and the burden of conducting a search to gather and produce all documents or
7 communications with the broad scope of this Request is not justified by the value of such a
8 search and production to resolving the issues in this Litigation.

9 The FTC objects to this Request because it seeks documents protected by the
10 attorney-client privilege, the deliberative process privilege, the informant’s privilege, the
11 law enforcement evidentiary or investigatory files privilege, and the work product
12 doctrine. Documents describing proposed action and the basis for proposed action
13 regarding Defendants in connection with a process for FTC action are protected
14 communications. Defendant Mueller has not properly pled or identified a basis for
15 disregarding the privileges that protect agency deliberations, law enforcement activities,
16 and work product. Accordingly, the FTC will not produce documents containing internal
17 FTC communications, notes, communications with informants and other law enforcement
18 agencies, documents related to such communications, or memoranda and analyses
19 prepared in anticipation of litigation.

20 The FTC is withholding documents based on these objections. The FTC produces
21 with this response the record of the Commission votes to approve the filing of the
22
23
24
25
26

1 Complaint and First Amended Complaint (FTCvGCE-FTC012682 – FTCvGCE-
2 FTC012685).

3 Respectfully submitted,
4 December 9, 2024
5 FEDERAL TRADE COMMISSION

6 By: /s/ Michael E. Tankersley
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COMMISSIONER VOTING RECORD

Vote		Khan	Slaughter	Bedoya	Comm. (Vacant)	Comm. (Vacant)
Yes	Date Time	12/20/2023 LK-RM	12/20/2023 RS -RM	12/20/2023 AB - RM	Date Time	Date Time
No	Date Time					
Abstain	Date Time					
Vote Withdrawn	Date Time					
Vote Reinstated	Yes	Date Time	Date Time	Date Time	Date Time	Date Time
	No	Date Time	Date Time	Date Time	Date Time	Date Time
	Abstain	Date Time	Date Time	Date Time	Date Time	Date Time
Recused	Date Time					
Not Participating	Date Time					

Under Rule 4.14(b), a quorum consists of the majority of Commissioners in office and not recused from the matter. Commissioners who indicate to the Office of the Secretary that they are “Not Participating” are excluded from the formation of a quorum. For example, if four Commissioners are in office and not recused, three must be ready to participate by voting “Yes,” “No,” or “Abstain” to have a quorum for the transaction of business.

FEDERAL
TRADE
COMMISSION

Commission Circulation



1. Circulation Type <input type="checkbox"/> Part 3 Adjudication <input checked="" type="checkbox"/> Vote <input type="checkbox"/> Information <input type="checkbox"/> Topping		2. Document Number 611536	2a. Related Document Number 611501
3. Matter Name Grand Canyon University		4. Matter Number X240015	5. Circulation Date 09/04/2024

6. Circulated By Chair Lina M. Khan
--

7. Document Title

MOTION TO AUTHORIZE STAFF TO FILE AN AMENDED COMPLAINT

8. Circulating Commissioner's Advisor Tom Dahdouh
--

9. Action <input checked="" type="checkbox"/> I move that this staff recommendation, in which I concur, be approved. A vote is respectfully requested by COB today.

TO BE COMPLETED BY THE OFFICE OF THE SECRETARY STAFF

Majority Vote		Voting Deadline		
Notified Commissioners				
Voting Deadline Tolloed (<i>Withdrawal of Vote</i>)		New Voting Deadline (<i>Extended by Circulation</i>)		Effective Date of Action
Document Type	Confidentiality Code	Entry Initials	Check Initials	Document Location

COMMISSIONER VOTING RECORD

Vote		Khan	Slaughter	Bedoya	Holyoak	Ferguson
Yes	Date Time	LK/NX/DD Date 9-4-24 Time 3:37 PM	RS/AK/DD Date 9-4-24 Time 3:39 PM	AB/AR/DD Date 9-4-24 Time 4:32 PM	Date Time	Date Time
No	Date Time	Date Time	Date Time	Date Time	Date Time	Date Time
Abstain	Date Time	Date Time	Date Time	Date Time	Date Time	Date Time
Vote Withdrawn	Date Time	Date Time	Date Time	Date Time	Date Time	Date Time
Vote Reinstated	Yes	Date Time	Date Time	Date Time	Date Time	Date Time
	No	Date Time	Date Time	Date Time	Date Time	Date Time
	Abstain	Date Time	Date Time	Date Time	Date Time	Date Time
Recused	Date Time	Date Time	Date Time	Date Time	Date Time	Date Time
Not Participating	Date Time	Date Time	Date Time	Date Time	MH/EJ/DD Date 9-4-24 Time 4:54 PM	AF/MP/DD Date 9-4-24 Time 4:52 PM

Under Rule 4.14(b), a quorum consists of the majority of Commissioners in office and not recused from the matter. Commissioners who indicate to the Office of the Secretary that they are “Not Participating” are excluded from the formation of a quorum. For example, if four Commissioners are in office and not recused, three must be ready to participate by voting “Yes,” “No,” or “Abstain” to have a quorum for the transaction of business.